

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

Huyen Mong Nguyen

Optometrist License No. 10148


Respondent.

Case No. D2 2002-162

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective on March 23, 2015.

IT IS SO ORDERED this 20th day of March, 2015.


Alejandro Arredondo, OD, President
California State Board of Optometry

**BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke
Probation Against:

Huyen Mong Nguyen
In Focus Optometry
1010-B Florin Road
Sacramento, CA 95831

Optometrist License No. 10148

Respondent


Case No. D2-2002-162

DECISION AND ORDER

The attached Proposed Decision is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective March 13, 2015.

It is so ORDERED February 11, 2015.



Alejandro Arredondo, O.D, President
California State Board of Optometry

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation
Against:

HUYEN MONG NGUYEN
In Focus Optometry

Optometry License No. OPT 10148

Respondent.

Case No. D2-2002-162

OAH No. 2013100585

PROPOSED DECISION

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 22, 2014, and November 19, 2014, in Sacramento, California.

Kristina Jansen, Deputy Attorney General, represented complainant Mona Maggio, the Executive Officer of the State Board of Optometry (Board), Department of Consumer Affairs.

Huyen Mong Nguyen (respondent) appeared and was represented by Craig S. Steinberg, Attorney at Law.

Evidence was received, the record was closed, and the matter was submitted for decision on November 19, 2014.

FACTUAL FINDINGS

1. On September 10, 1993, the Board issued to respondent a Certificate of Registration to Practice Optometry, License number 10148. The license will expire on October 31, 2015, unless renewed or revoked.
2. On September 25, 2013, complainant, acting solely in her official capacity as the Executive Officer of the Board, signed and thereafter filed the Petition to Revoke

Probation. Complainant contends that grounds exist to revoke respondent's probation and impose the stayed order of revocation due to respondent's failure to comply with the terms and conditions of her probation. Specifically, complainant alleges that respondent failed to comply with the community service and billing audit requirements of her probation.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Prior Disciplinary Actions

SEPTEMBER 26, 2005 ACCUSATION

4. On September 26, 2005, Taryn Smith, the former Executive Officer for the Board, signed and thereafter filed an Accusation against respondent. The Accusation alleged that between May 2000 and July 2002, respondent "knowingly presented or caused to be presented false or fraudulent claims for the payment of losses under contracts of insurance..." Specifically, for at least ten patients, respondent submitted false or fraudulent claims to the Vision Service Plan (VSP), a vision insurance company. The Accusation also stated that respondent admitted that "some of the billings she submitted to VSP were not accurate and that she submitted eClaims to VSP with prescriptions different from those noted in the patient's files." Respondent informed the Board "that she 'wanted to make her customers happy' by helping them buy products that were not covered by insurance."

The Accusation charged respondent with knowingly presenting false or fraudulent claims for payment under a contract for insurance, a violation of Business and Professions Code section 810, subdivision (a)(1) and (2), and obtaining fees by fraud or misrepresentation, a violation of Business and Professions Code section 3090, subdivision (b).

JULY 10, 2006 STIPULATED SETTLEMENT AGREEMENT

5. On May 11, 2006, respondent entered into a Stipulated Settlement Agreement and Disciplinary Order (July 10, 2006 Agreement) with the Board. The Agreement was effective on July 10, 2006, after it was adopted by the Board. As part of the July 10, 2006 Agreement, respondent admitted to the truth of each and every charge and allegation in the Accusation. As a result of the July 10, 2006 Agreement, respondent's license was revoked. However, the revocation was stayed. Respondent's license was suspended for 14 days. In addition, respondent was placed on probation for five years, subject to various terms and conditions, including that she comply with the Board's probation program, obey all laws, submit timely written reports to the Board, submit to a supervised practice, and pay the Board \$21,126.25 in costs associated with its investigation and enforcement of the Accusation. There was no requirement in the July 10, 2006 Agreement that respondent complete community service hours.

May 13, 2010 PETITION TO REVOKE PROBATION

6. On May 13, 2010, complainant filed a Petition to Revoke Probation against respondent, due to her failure to comply with the terms and conditions of her probation. Complainant alleged that respondent failed to comply with the Board's probation program in that she failed to obey all laws. Specifically, respondent drove her vehicle with an expired driver's license. Complainant also alleged that respondent failed to submit timely quarterly reports, failed to timely obtain a supervising optometrist to supervise her practice, and failed to make timely payments to the Board for the cost associated with its investigation and enforcement which she agreed to pay.

MAY 18, 2011 STIPULATED SETTLEMENT

7. On January 14, 2011, respondent entered into a Stipulated Settlement Agreement and Disciplinary Order (Agreement) with the Board. The Agreement was effective on May 18, 2011, after it was adopted by the Board. As part of the Agreement, respondent admitted to the truth of each and every charge and allegation in the Petition to Revoke Probation. As a result of the Agreement, respondent's probationary license was revoked. However, the revocation was stayed and respondent was placed on probation for an additional five years, subject to various terms and conditions. The terms and conditions that are at issue are as follows in pertinent part:

10: COMMUNITY SERVICE.

Within thirty (30) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free professional services on a regular basis to a community of charitable facility or agency, amount [sic] to a minimum of sixteen (16) hours per month of probation. Such services shall begin no later than sixty (60) days after the effective date of this order.

[...]

14: VIOLATION OF PROBATION.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall

be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

[¶] [¶]

16. MONITOR BILLING SYSTEM AUDIT.

Within sixty (60) days of the effective date of this decision, Respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to audit Respondent's billing for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. If requested by the Board, the Board shall be advised of the results of the audit, upon request. The cost of the audits shall be borne by Respondent. Failure to pay for the audits in a timely fashion or failure to provide the Board with the audit results or copies of the audited records within ten (10) days from audit completion shall constitute a violation of probation. Respondent's practice is no longer required to be monitored by a supervising optometrist (Dr. Hoverman), at this point in time.

(Capitalization in original.)

There was no separate "Billing System condition" in respondent's Agreement.

Respondent's Probation Violations

VIOLATION OF COMMUNITY SERVICE REQUIREMENT

8. Jessica Sieferman, a probation monitor for the Board, served as respondent's probation monitor during all times relevant to this proceeding. Within one week of the effective date of the Agreement, Ms. Sieferman met with respondent for an orientation meeting to discuss the terms of her probation. Ms. Sieferman discussed with respondent how she planned to obtain 16 hours per month of community service. Respondent informed Ms. Sieferman that she intended to do some research and submit a written plan. Respondent had until June 17, 2011, to submit a plan.

9. On June 17, 2011, the Board received respondent's written community service plan. Respondent's plan stated that she would give free eye examinations for four hours every Friday, "to low income people" at her business, In Focus Optometry. Respondent stated that she would contact "Lyons Club, Kiwanis, Salvation Army, Loaves and Fishes, The Mustard Seed, etc." to offer to conduct free eye examinations.

10. On June 27, 2011, Ms. Sieferman sent respondent an email that contained several questions about respondent's community service plan. Ms. Sieferman was concerned that respondent would not be able to meet her community service hours. She was also concerned that the hours would be difficult to verify. Ms. Sieferman asked respondent how she intended to advertise her free eye exams and to explain her criterion for low income. Ms. Sieferman also asked respondent if she had contacted "other organizations" that respondent had mentioned she would contact to inquire as to whether she could arrange to provide free optometric services for the organization.

Ms. Sieferman informed respondent that she would "only receive community service credit for time spent on the free eye exams." Ms. Sieferman further explained that "if you offer free exams from 9AM-1PM, but only give one 15 minute exam, you will only receive credit for 15 minutes." Ms. Sieferman recommended that respondent "research health clinics and any health fairs" in respondent's area. Respondent did not reply to the email.

11. On July 9, 2011, Ms. Sieferman sent respondent a follow-up email and asked respondent to respond to her questions regarding her community service plan. Ms. Sieferman informed respondent that her plan had not yet been approved.

12. On July 12, 2011, respondent sent Ms. Sieferman an email and responded to her questions. In response to the question regarding how she intended to advertise the free eye exams, respondent wrote:

There are plenty of people who need vision care but cant [sic] afford it. I usually like to donate my time to clubs such as the Kiwanis and Lions or the Asian temples and churches.

Respondent also wrote that she had no set criteria for income and that she intended to give free eye examinations to anyone recommended by the leaders of the organizations where she donated her time. Respondent also stated that she had not contacted any organization to arrange to provide free optometric services because she did not think that it would be "that difficult to attract people for FREE eye exams." (Emphasis in original.)

13. On July 16, 2011, Ms. Sieferman sent respondent an email and informed her that she and Ms. Maggio were "hesitant" to approve her community service plan. Ms. Sieferman was concerned that respondent still did not have a way to verify the free services she intended to provide. Ms. Sieferman asked respondent to submit a plan of how she intended to provide the verification of her community services hours. Ms. Sieferman also reminded respondent that during the orientation meeting she had offered to create a "Verification Form" for respondent to use, but respondent did not want the Board's letterhead on the form. Ms. Sieferman instructed respondent to submit a "Verification of Community Service form" for approval not later than July 20, 2011. Ms. Sieferman informed respondent that the form should include the "date, time spent examining the patient and the patient's signature." Ms. Sieferman also reminded respondent that she would only receive credit for time spent examining patients.

The same day, Ms. Sieferman left respondent a voice message and informed her that she had sent her an email of "high importance" concerning her community service plan. Ms. Sieferman asked respondent to respond to her email immediately and to contact her if she had any questions. Respondent did not reply to Ms. Sieferman's email. Per the Agreement, respondent's community service hours were required to begin no later than July 17, 2011.

14. Only July 19, 2011, Ms. Sieferman sent respondent an email and asked her if she had received her voice message or reviewed the email she had sent her on July 16, 2011.

15. On July 20, 2011, respondent sent Ms. Sieferman an email and "Verification of Community Service form." Ms. Sieferman approved the form and respondent's community service plan on July 21, 2011. Respondent was required to obtain prior approval from Ms. Sieferman to perform any community services hours for any activities other than providing free eye examinations for four hours on Fridays. Respondent was required to obtain pre-approval so that Ms. Sieferman could ensure that proposed community service was appropriate and the hours of service could be verified. In order to obtain prior approval, respondent could email Ms. Sieferman information about the community service opportunity and contact information for the coordinator of the event or a person that could verify the time respondent spent performing eye examinations.

16. Per respondent's Agreement, she was required to file quarterly reports of compliance. At the same time, respondent provided verification of her community service hours for the previous quarter. On October 6, 2011, respondent submitted verification of community service hours for July, August and September 2011. Respondent informed Ms. Sieferman that because her plan was not approved until July 21, 2011, she did not have enough time to complete her hours for July 2011. Respondent only completed 3.48 hours in July 2011. Respondent completed over 16 hours of community service in both August and September 2011.

17. On October 11, 2011, Ms. Sieferman sent respondent an email concerning her community service hours for July, August, and September 2011. Ms. Sieferman acknowledged that in July, respondent only had 11 days to complete 16 hours of community service. She stated "[i]n the future, if you do not meet the 16 hour per month requirement, it will be considered a violation of your probation." (Bolding in original.)

Concerning the verification forms respondent submitted, Ms. Sieferman informed her that "in some instances" she had failed to obtain the patient's signature to verify the time spent on the examination. Ms. Sieferman directed respondent to provide the patient records for four patients who had not signed the verification form. Ms. Sieferman informed respondent that in the future, she would not receive credit hours for any examinations in which the patient did not sign the verification.

Ms. Sieferman informed respondent that it appeared on the documentation respondent provided that one individual "forged signatures" for seven other individuals. Ms. Sieferman referenced in the email a conversation she had with respondent the same day, in which

respondent explained that a father had signed on behalf of himself and seven minors. Ms. Sieferman instructed respondent that the "parent/guardian" should not forge the signatures of the minors and in order to "rectify this situation in the future" to add a column to the verification form titled "Relation to Patient."

18. On January 5, 2012, respondent's counsel Mr. Steinberg sent an email to Ms. Maggio. Mr. Steinberg stated that the community service plan submitted by respondent was "flawed" in that she was only receiving credit for the time she spent conducting examinations. Mr. Steinberg further stated that respondent's business had been slow, that she was only averaging 20 paid examinations per month and that it was "impossible" to expect her to be able to schedule enough free eye examinations to meet the 16-hour per month requirement. Mr. Steinberg stated that respondent was scheduled to turn in her next community service logs on January 6, 2012, and that she did not meet the 16-hour per month requirement.

Mr. Steinberg requested that the Board permit respondent 30 days to submit a new community service plan and that the Board not deem her failure to obtain her hours up to that point a violation of her probation. He also stated that respondent was willing to make up any "net deficiency in the accumulated community service hours so that the total hours will meet the 16/hr [sic] per month average."

19. On January 5, 2012, Ms. Sieferman responded to Mr. Steinberg's email. Ms. Sieferman informed Mr. Steinberg that she had discussed with respondent the "potential problems" with the plan submitted by respondent. Ms. Sieferman informed Mr. Steinberg that his proposal that respondent submit a new plan was a "good idea to solve her current problems." Ms. Sieferman instructed Mr. Steinberg to have respondent submit her new plan within the next 30 days. Ms. Sieferman also recommended that respondent look into "volunteer organizations that are in need of optometrists." Respondent did not submit a new community service plan.

20. Between October 2011 and April 2012, respondent failed to satisfy the community service requirement of her Agreement as follows:

<u>Date</u>	<u>Hours Completed</u>
October 2011	7.92
November 2011	7.5
December 2011	8.33
January 2012	4.25
February 2012	4
March 2012	10.75
April 2012	10.5

21. On April 10, 2012, Ms. Sieferman held a compliance interview with respondent. On April 18, 2012, Ms. Sieferman sent respondent an email which documented items that were discussed at the compliance interview. Ms. Sieferman requested that

respondent provided verification for the community service hours she completed in October, November and December 2011.

Ms. Sieferman also requested that respondent provide her with the name of the coordinator for a convalescent home where respondent wanted to perform community service hours and the contact information for someone who could verify hours respondent spent providing free services at a "RAM" Health Fair event on April 1 and 2, 2012. Respondent had spent 16 hours providing free eye examinations at the event, but did not obtain prior approval from Ms. Sieferman to work at the RAM event. Ms. Sieferman agreed to verify the hours that respondent had worked and to record that she provided the services. However, it would be noted that she did not get prior approval. As a result, respondent only got credit for 10.5 hours of community service for April 2012.

Ms. Sieferman encouraged respondent to contact her with any questions or concerns about her probation, rather than wait to notify her that she is having problems complying with the terms of her probation.

22. On May 21, 2012, Ms. Sieferman sent respondent an email as a follow-up to her April 18, 2012 email. Ms. Sieferman informed respondent that she still had not received verification of her community service hours for October, November, and December 2011. Respondent also had not sent Ms. Sieferman contact information for the coordinator of the convalescent home or anyone who could verify the hours respondent spent at the RAM Health Fair event.

23. Between June 2012 and August 2012, respondent failed to satisfy the community service requirement of her Agreement as follows:

<u>Date</u>	<u>Hours Completed</u>
June 2012	9.7
July 2012	6.8
August 2012	3.1

24. On August 2, 2012, Ms. Sieferman sent respondent an email and informed her that she had researched community service opportunities in respondent's area. Ms. Sieferman stated that the California Vision Foundation (CVF), the charitable arm of the California Optometric Association (Association) was willing to allow respondent to volunteer her time with the organization. Ms. Sieferman provided respondent with contact information for the coordinator of the CVF. Respondent contacted the CVF and arranged to have CVF send her patients. At hearing, Amanda Winans, an administrative assistant with the Association explained that respondent had asked CVF to send her as many patients as possible.

25. At hearing, Ms. Sieferman testified that there was a period of time in 2012, when many of the Board's probationers were struggling to find enough community service opportunities to fulfill their probation requirements, because some organizations were

hesitant to allow optometrists who were on probation to provide free services. In addition to the CVF, Ms. Sieferman contacted health clinics to research volunteer opportunities for the Board's probationers. By 2013 the community services opportunities improved and all of the Board's probationers, except respondent, complied with their community service requirements.

26. On October 7, 2012, respondent sent Ms. Sieferman an email with verification of her community service hours for July, August, and September 2012. Respondent stated that she did not meet her hours for July and August, but that since Ms. Sieferman had referred her to the Association, she had a "steady amount of patients to serve out [her] community service requirement."

27. Between October 2012 and May 2013, respondent failed to satisfy the community service requirement of her Agreement as follows:

<u>Date</u>	<u>Hours Completed</u>
October 2012	7.3
November 2012	6.7
December 2012	15.7
January 2013	14.1
February 2013	10.1
March 2013	10
April 2013	4.7
May 2013	1.7
June 2013	9.3

28. On or about July 1, 2013, respondent sent a letter to Ms. Sieferman concerning her failure to obtain her hours for April, May and June 2013. Respondent stated that in April 2013, she closed her office for a week and one-half in order to travel to Arizona. Respondent was scheduled to donate one of her kidney's to her sister. Respondent was required to go through extensive testing in April prior to the surgery. Respondent also stated that in April, CVF had sent her six patients, but one failed to show for the appointment.

Respondent stated that in May 2013, she closed her office for a little over one week to prepare for her surgery which occurred on May 29, 2013. In addition, she only saw four CVF patients that month.

Respondent provided Ms. Sieferman a note from her doctor which excused her from work from May 29, 2013, until July 15, 2013, due to her surgery and recovery. Based upon the doctor's note, respondent's failure to obtain her hours for June 2013 was not considered by the Board to be a probation violation. Had respondent provided a doctor's note excusing her from work for May 2012, Ms. Sieferman would have recommended that that respondent's community service hours be forgiven for that month.

VIOLATION OF MONITOR BILLING SYSTEM AUDIT PROVISION

29. Pursuant to respondent's July 10, 2006 Agreement, respondent's practice was supervised by Dr. Hoverman. Respondent's May 18, 2011 Agreement removed the requirement that respondent's practice be monitored. However, in order to ensure that respondent did not resume her previous fraudulent billing practices, pursuant to the Agreement, "randomly selected client billing records" were to be "reviewed in accordance with accepted auditing/accounting standards and practices." At hearing, Ms. Maggio testified that the Agreement does not provide a due date in which the audit must be completed. The Board staff has the authority to work with respondent to choose a date, based upon the availability of the selected auditor.

30. Respondent was required to provide the Board with the names and qualifications of three auditors to perform an audit of respondent's billings records, by July 17, 2011. Respondent timely submitted to Ms. Sieferman the names and qualifications of three auditors. Ms. Sieferman sent emails to the three auditors to confirm that the auditors agreed to provide auditing services. Two of the auditors declined to provide services and one auditor failed to respond.

31. On October 13, 2011, respondent submitted to Ms. Sieferman the names and qualifications of two more auditors. Craig Fechter, of Fechter & Company, Certified Public Accountants (Fechter) was one of the auditors.

32. On October 14, 2011, Ms. Sieferman sent an email to both of the auditors. Ms. Sieferman provided the auditors with language from respondent's Agreement related to the billing system audit requirement to ensure that they had information regarding the nature of the audit.

33. On November 29, 2011, Lamar E. Edwards, Principal with Fechter, sent Ms. Sieferman an email and attachment. Mr. Edwards requested approval to bid on the audit. He attached a sample of the procedures he intended to perform during the audit and a description of his audit background. Mr. Edwards was not a certified public accountant (CPA).

34. On December 4, 2011, Ms. Sieferman sent Mr. Edwards an email and informed him that he and Fechter could perform the billing audit. She instructed Mr. Edwards to contact respondent and "proceed with auditing her practice."

35. On December 15, 2011, Mr. Edwards sent an email to respondent and informed her that Ms. Sieferman had approved Fechter to perform the audit. No work was performed on the audit between December 15, 2011, and April 2012.

36. During the April 10, 2012 compliance interview, Ms. Sieferman discussed the billing audit requirement with respondent. Respondent asked that the Board consider a monitoring report received from Dr. Hoverman during her first probation period. In response to this request, Ms. Sieferman wrote to respondent in an April 18, 2012 email:

After discussing this condition with Mona and Anahita and reviewing your previous condition of probation, it was determined that we will only require an audit of your billing records dating back to the date of Dr. Hoverman's last audit report, which was June 23, 2010. In addition, you asked for a specific number for the minimum amount of records to be audited. It has been determined that we will require the auditor to pull a minimum of ten records each month. However, as discussed during our April 10th meeting, the Board will not place a maximum number of records to be audited. If the auditor feels more records need to be audited in order for him/her to reach his/her conclusion, he/she can do so.

(Emphasis in original.)

37. On May 21, 2012, Ms. Sieferman sent respondent an email, which in part, addressed the billing audit. Ms. Sieferman stated that she had answered all of the questions about the audit respondent raised during the compliance interview. Ms. Sieferman instructed respondent to have Mr. Edwards complete the audit of her billings within the next 30 days.

38. On or about July 23, 2012, Mr. Edwards sent respondent a letter to "confirm [Fechter's] understanding of the terms and objectives of their "engagement and the nature and limitations of the services" that would be provided. Mr. Edwards attached a copy of the "agreed-upon procedures" that would be followed in order to comply with "Billing System condition" requirement of respondent's Agreement. The letter further stated that "fieldwork" was anticipated to start on September 17, 2012. Respondent forwarded the letter and attachment to Ms. Sieferman.

39. At hearing, Ms. Sieferman testified that there was no "Billing System condition" in respondent's Agreement, despite the fact that it was referenced in the "MONITOR-BILLING SYSTEM AUDIT" condition. Respondent, Ms. Sieferman and Ms. Maggio worked with Mr. Edwards to develop a description of the work to be performed for the audit to ensure that respondent's billing records met the appropriate standards of practice.

40. On August 20, 2012, Mr. Edwards sent respondent an "updated engagement letter" that had been approved by Ms. Sieferman the week before. Reference to the "Billing System condition" was removed from the explanation of services to be performed and replaced with references to respondent's "billing practices." Mr. Edwards informed respondent that before the audit could commence, she was required to pay a \$1,200 deposit that would be put towards the final balance. Respondent failed to pay the deposit.

41. On October 7, 2012, respondent sent Ms. Sieferman an email, which stated in part, that she was not able to pay Fechter the required \$1,200 deposit. Respondent explained that she had financial difficulties and could not obtain a loan to pay the deposit.

42. On January 3, 2013, Ms. Sieferman sent respondent an email and requested an update on the status of the audit. Ms. Sieferman stated that she understood that respondent had financial challenges, but that in May 2012, she had been directed to have the audit complete within 30 days. Ms. Sieferman requested that respondent provide her with a date in which the audit would be completed.

43. On February 4, 2013, respondent sent Ms. Sieferman an email and informed her that she had "most of the down payment money" for the audit. Respondent stated that she would contact the auditor that day or the next day.

44. On February 5, 2013, Ms. Sieferman sent respondent an email and stated that "[r]ather than filing a Petition to Revoke Probation for not complying with the audit condition" Ms. Maggio agreed to give respondent until February 28, 2013, to have the audit conducted. Ms. Sieferman also stated that if respondent was not able to meet the deadline, to notify her immediately and provide her with the date in which the audit would be conducted.

45. On March 5, 2013, Mr. Edwards informed Ms. Sieferman that respondent had paid the down payment for the audit the previous week. Mr. Edwards started the review of respondent's billing records and he hoped to complete the review within 30 days.

46. On April 4, 2013, Ms. Sieferman requested an update from Mr. Edwards on the status of the audit. He replied the same day and informed Ms. Sieferman that he finished the review and was summarizing the results. Thereafter, he would review the results with respondent and then finalize the report. His goal was to finalize the report in two weeks.

47. On June 17, 2013, Mr. Edwards sent respondent an email and informed her that he had "wrapped up the report for review" and that he had informed Ms. Sieferman of the status of the report. He also stated that he would send out the final report that week, after respondent paid the remaining balance of \$4,305.88 for the cost of the audit. Respondent forwarded this email to Ms. Sieferman on June 21, 2013. Ms. Sieferman did not have any communication with Mr. Fechter concerning the status of the audit.

48. After respondent received the final bill for services from Mr. Edwards, she informed Ms. Sieferman and Ms. Maggio that she had a dispute with Fechter over cost of the audit. Respondent requested that she be allowed to retain a new auditor. On July 18, 2013, Ms. Sieferman sent respondent an email and informed her that the Agreement provided that:

Failure to pay for the audits in a timely fashion or failure to provide the Board with the audit results and/or copies of the audited records within ten (10) days from audit completion shall constitute a violation of probation.

Ms. Sieferman informed respondent that if she wanted to modify the audit condition of her probation she may "petition the Board for modification of probation." Respondent did not file a petition with the Board to modify her probation.

49. Mr. Fechter testified at hearing on October 22, 2014. Mr. Fechter is the owner of Fechter. There are no other equity shareholders of the company. He stated that as of June 2013, the field work for the audit had been completed, but the audit was not complete. Mr. Fechter makes the determination as to when the audit is complete and he signs the audit results because Mr. Edwards is not a CPA. Due to a dispute with respondent over the fees she owed, no work was done on the audit between June 2013 and June 2014. The dispute was resolved in June 2014, when respondent paid Fechter the money she owed for the audit. Mr. Fechter testified that the audit report was almost finalized and he found no evidence of overbilling by respondent. Mr. Fechter understood that once the audit report was complete, the Board would receive a copy.

Respondent's Testimony

50. Respondent testified that she has "done everything" to comply with the terms of her Agreement. She believes that she has met all of her conditions of probation. She has obeyed all laws; submitted her quarterly reports, paid the full amount of the cost recovery, worked the required hours per week, passed the licensure examination, completed the required continuing education and submitted to a mental health evaluation. Respondent testified that she understands that it is important for her to comply with the Agreement because failure to do so would affect her career and livelihood.

51. Respondent understood that per her Agreement, she was required to complete 16 hours of community service per month. She intended to provide free eye examinations and to volunteer her time at vision screening health fairs. Initially, respondent did not understand why the Board was hesitant to approve her community service plan, because respondent did not appreciate that it may be difficult to find patients who needed free examinations. Respondent attributes her difficulty with initially failing to comply with the community service provision of her Agreement to several factors, including the lack of patients sent to her by organizations she contacted, the restriction on the time she was credited for providing eye examinations, her fear of communicating with Ms. Sieferman and health issues.

52. Initially, respondent contacted several organizations including Loaves and Fishes, the Salvation Army, and Mary House to obtain patients. The Salvation Army sent her a few patients, but they stole some of her office equipment. Respondent attempted to volunteer for VSP, but her request was declined.

53. With regards to patient examinations, respondent was only credited for the time she spent with a patient performing an eye examination. However, the actual amount of time she spent with patients could be double the amount of time spent on the examination. In addition, there were times that she did not obtain signatures from patients to verify the time she spent on the examinations, so she did not get credit for the time.

54. Respondent testified that she did not submitted verifications for over 100 hours of community service she performed at various events because she did not get prior

approval from Ms. Sieferman to volunteer her time at the events. Respondent did not seek prior approval from Ms. Sieferman because she was intimidated by her and afraid to talk to her. Respondent avoided communicating with Ms. Sieferman because she believed that Ms. Sieferman and the Board were "out to get her." Rather than request prior approval, she hoped to get her required service hours through other means. Respondent provided several examples of why she was afraid of Ms. Sieferman, including that respondent was required to take the licensure examination in front of Ms. Sieferman, with no one else in the room. Respondent was intimidated by Ms. Sieferman. Respondent failed the test. The second time respondent took the test, she was in a room full of other test takers and Ms. Sieferman was not present. Respondent passed the test. Ms. Sieferman also directed respondent to cease practicing because her license had expired, when in fact she had timely submitted her renewal, but it had not been processed by the Board.

55. Respondent did not complete her required community hours for April, May and June 2012, because she had kidney surgery on May 29, 2013. Prior to the surgery she had numerous procedures and tests performed in Arizona. Despite the fact that her doctor excused her from work until July 15, 2012, within two days after she was released from the hospital, she went back to work in order to complete her community service hours. She did not provide Ms. Sieferman with a doctor's note to excuse her community service hours for April and May 2012, because she did not think that Ms. Sieferman would excuse the community service requirement for those months.

56. Respondent was aware Mr. Steinberg had asked the Board to allow her to submit a new community service plan. She was also aware, based upon a conversation she had with Ms. Sieferman, that she could have filed a petition with the Board to modify her probation. Respondent contended that she did not submit a new plan, or a petition to modify her probation, because she was intimidated and fearful of Ms. Sieferman and the Board.

57. In the last year respondent has met her community service requirement each month. In December 2013 and May 2014, respondent hosted an event at her office and offered free exams, glasses and lenses. The events were very effective in obtaining her community service hours, but it cost her \$2000 to provide the services. In late 2013, respondent hired a Hispanic employee who is connected with the Hispanic community charity events. As a result, respondent receives many more community service opportunities from the Hispanic community.

58. Concerning the bill audit requirement of her Agreement, respondent could not pay for the audit because she had financial difficulties. Some insurance companies would not allow her to provide services to patients because she was on probation. Pursuant to the Agreement, respondent's ability to work for other practices was also restricted. Respondent was served with an eviction notice from her office and her house went into foreclosure.

59. Respondent also attributed the delay in the commencement of the audit to Mr. Edwards. She testified that he "kept putting it off." Respondent paid the \$1,200 deposit in late February 2013. Mr. Edwards started his review on or about March 5, 2013. Respondent

disputed the final bill she received from Fechter in June 2013, because she contended that she was billed for services that were not performed. Respondent testified that when she questioned Mr. Edwards about the charges, "he got upset." Respondent was aware that she was required to pay the auditor in a timely manner, which she interpreted to mean that she had to pay the auditor by the end of her probation. She also contended that she should not have to pay the auditor if there was "fraud." Respondent understood that she could have filed a petition with the Board to obtain permission to hire a new auditor, but she did not do so because she believed she would "get into further trouble." By June 2014, the dispute with Fechter was resolved and she paid the bill. Respondent testified that the Board has never asked her to provide a copy of the audit report prepared by Fechter.

Testimony of Chris Cabrera

60. Chris Cabrera is an optometrist in Woodland, California. He met respondent approximately 15 years ago. Mr. Cabrera considers respondent a professional friend. Mr. Cabrera was aware that respondent was on probation with the Board. In the last six or seven years respondent has discussed with him the problems she has had with the Board and asked him for assistance in finding community service opportunities. He has provided her with a few recommendations. He has known respondent to be trustworthy and honest. He believes that she has been dedicated to meeting her community service requirement.

Discussion

61. Pursuant to California Code of Regulations, title 16, section 1575, the Board has adopted Uniform Standards Related to Substance Abuse & Disciplinary Guidelines (DG 4, 05-2012) (Guidelines). The Guidelines provide that the maximum discipline for a violation of probation is imposition of the discipline that was stayed. The minimum discipline is imposition of an "actual period of suspension." The Guidelines also state:

The maximum discipline should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. Other violations of probation should draw at least a period of actual suspension.

62. Respondent made several arguments in an effort to excuse her obligation to comply with the terms of her Agreement. Respondent argued that the community service provision of the Agreement provided that she must complete what "amounts to" 16 hours of community service per month. Over the five years of her probation the total would be 960 hours. Respondent contended that as long as she completes 960 hours of community service by the end of the term of her probation, she would be in compliance. Additionally, respondent contended that every month she attempted to obtain her hours and since the petition to revoke her probation was filed she has been in compliance with this provision.

Respondent also argued that the billing system audit provision of her Agreement was nonsensical since there was no billing system condition in her Agreement. She also

contended that the Board's staff did not have the authority to impose a due date for the completion of the audit, since no date was included in the Agreement approved by the Board. Finally, respondent argued that she was not required to pay for the audit until the end of her probation, and was only required to provide a copy of the audit report to the Board, if it was requested. She contended that a copy of the audit report was never requested.

Respondent's arguments are without merit. The Board established, by a preponderance of the evidence, that respondent violated the terms of her probation. Between October 2011 and May 2013, in 18 out of 20 months respondent failed to obtain her required 16 hours of community service. Respondent testified that she was aware the Agreement required her to complete 16 hours of community service per month and the plain language of the Agreement supports this understanding. In January 2012, respondent was granted approval to file a new community service plan to rectify any problems her plan may have caused in obtaining those hours. Yet she failed to file a new plan. Respondent's contention that she did not file a new plan or a petition to modify her probation because she did not want to communicate with Ms. Sieferman or the Board is not convincing, nor does it excuse respondent's obligation to comply with the terms of her Agreement. Direct and open communication with Ms. Sieferman and the Board's staff was vital to ensuring that Board was aware of any issues respondent had complying with the terms of her probation. The result of respondent's failure to obtain her hours, file a new community service plan or petition to modify her probation, was that for more than two years of her five-year probationary term, she was out of compliance with her Agreement. The fact that respondent began to comply with the community service requirement only after the Board filed a petition to revoke her probation, demonstrates that respondent was not doing everything she could to comply with the Agreement, as she contended.

63. Respondent's contention that she was not required to comply with the billing system audit provision of her Agreement because the reference to the "Billing System condition" was nonsensical is also not supported by the evidence. While the Agreement referenced a condition that was not contained in the Agreement, further reading of the provision clearly provided for the scope of the audit. In addition, Ms. Sieferman worked with respondent and the auditor to develop the scope of the audit to ensure that it complied with the intent of this provision, which was to ensure that respondent was not engaging in fraudulent billing practices.

Furthermore, respondent's arguments that the Board staff could not impose a due date for the audit, that she was not required to pay for the audit until the end of her probation, and that she was not required to give the Board a copy of the audit, because it was not requested, are also not supported by the evidence. The audit provision of respondent's Agreement required that she provide the Board with the names of three qualified auditors within 60 days of the effect date of the Agreement. The Board staff had authority to work with respondent concerning a due date for the audit, based upon the availability of the auditor.

On December 4, 2011, Ms. Sieferman approved Mr. Edwards and Fechter to perform the audit. On December 15, 2011, Mr. Edwards informed respondent that Ms. Sieferman had

approved Fechter to begin the audit. As of April 2012, no work had been performed on the audit. During the April 10, 2012 compliance interview, respondent asked Ms. Sieferman questions about the scope of the audit. By August 20, 2012, the scope of the audit was established and Ms. Sieferman had approved the explanation of services to be performed by Fechter. Mr. Edwards asked respondent for a deposit of \$1,200 to begin the audit. No work was performed on the audit until March 5, 2013, because respondent could not afford to pay the deposit. On June 17, 2013, Ms. Sieferman was informed by Mr. Edwards that the final report would be sent to her in a week, after respondent paid the remaining balance for the cost of the audit. Per the Agreement, respondent was required to pay for the audit in a "timely fashion." The purpose of this provision is to ensure that respondent did not attempt to hide the results of the audit by failing to pay for the audit. Respondent failed to pay for the audit until June 2014. While there may have been a dispute over the billing, failure to pay for the audit for over one year constitutes a violation of the Agreement. The Board was deprived of the results of the audit. As a result, the Board could not determine if respondent had engaged in any fraudulent billing practices.

In addition, respondent's contention that she was not required to provide the Board with a copy of the audit report until the Board asks for a copy is also not supported by the evidence. Mr. Fechter testified that he understood that the audit report would be sent to the Board. In addition, the audit provision in the Agreement clearly states that "...failure to provide the Board with the audit results or copies of the audited records within ten (10) days from audit completion shall constitute a violation of probation."

64. The Board must ensure that respondent can exercise good judgment and that she will not pose a threat to the health, safety, or welfare of the public. The Board has given respondent numerous opportunities to demonstrate that she can comply with the terms of her probation and the Board's rule. The Board has given respondent a generous amount of latitude in an effort to bring her into compliance with her Agreement. Despite all of these efforts, respondent has failed to comply with the terms of her Agreement. Most concerning is her failure to comply with the audit provision of her Agreement. This provision went to the root of her past fraudulent conduct. Respondent's conduct demonstrated a recalcitrant attitude. When all the facts and circumstances are considered, it would be contrary to the public interest to allow respondent to remain licensed at this time. Pursuant to the Board's Guidelines, the appropriate discipline is to set aside the stay order and impose the stayed revocation of respondent's license.

LEGAL CONCLUSIONS

1. Business and Professions Code section 3090 provides, in pertinent part, that:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, [...] and the board shall have all the powers granted in this chapter for these

purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

2. The burden of proof in this matter is on complainant to show by a preponderance of evidence that respondent's license should be revoked. (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434). If complainant meets its burden, rehabilitation is akin to an affirmative defense; consequently, the burden of proof of establishing an affirmative defense is on the respondent. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

3. As set forth in Factual Findings 7 through 28, and 62, respondent violated condition 10 of the Agreement when she failed to comply with the community service requirement of her probation. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license, pursuant to condition 14 of the Agreement.

4. As set forth in Factual Findings 7, 29 through 49, and 63, respondent violated condition 16 of the Agreement in that she failed to pay for the billing audit conducted by Fechter, in a timely fashion. Therefore, cause exists to set aside the stay order and impose the stayed discipline of revocation of respondent's license, pursuant to condition 14 of the Agreement.

5. When all of the evidence is considered, respondent demonstrated that she cannot continue to be licensed at this time, without posing a threat to the health, safety, or welfare of the public.

ORDER

The Petition to Revoke the Probation of Huyen Mong Nguyen, Optometry License Number 10148, is GRANTED. Optometry License Number 10148, issued to respondent Huyen Mong Nguyen is REVOKED.

DATED: December 19, 2014



MARCIE LARSON

Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
KRISTINA T. JANSEN
3 Deputy Attorney General
State Bar No. 258229
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-5403
6 Facsimile: (916) 327-8643
Attorneys for Complainant

7
8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke
11 Probation Against,

Case No. D2-2002-162

12 **HUYEN MONG NGUYEN**
13 **In Focus Optometry**
14 **1010-B Florin Road**
Sacramento, CA 95831

PETITION TO REVOKE PROBATION

15 **Optometry License No. OPT 10148**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio (Complainant) brings this Petition to Revoke Probation solely in her
21 official capacity as the Executive Officer of the State Board of Optometry, Department of
22 Consumer Affairs.

23 2. On or about September 10, 1993, the State Board of Optometry issued Optometry
24 License Number OPT 10148 to Huyen Mong Nguyen (Respondent). The Optometry License was
25 in effect at all times relevant to the charges brought herein and will expire on October 31, 2013,
26 unless renewed.

27 3. In a disciplinary action entitled "In the Matter of Accusation Against Huyen Mong
28 Nguyen," Case No. CC 2002-162, the State Board of Optometry, issued a decision pursuant to a

1 stipulated settlement, effective July 10, 2006, in which Respondent's Optometry License was
2 revoked. However, the revocation was stayed and Respondent's Optometry License was placed
3 on probation for a period of five (5) years with certain terms and conditions. A copy of that
4 decision is attached as Exhibit A and is incorporated by reference.

5 4. In a disciplinary action entitled "In the Matter of the Petition to Revoke Probation
6 Against Huyen Mong Nguyen," Case No. CC 2002-162, the State Board of Optometry, issued a
7 decision pursuant to a stipulated settlement, effective May 18, 2011, in which Respondent's
8 Optometry License was revoked. However, the revocation was stayed and Respondent's
9 Optometry License was placed on probation for an additional period of five (5) years with certain
10 terms and conditions. A copy of that decision is attached as Exhibit B and is incorporated by
11 reference.

12 JURISDICTION

13 5. This Petition to Revoke Probation is brought before the State Board of Optometry
14 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
15 references are to the Business and Professions Code unless otherwise indicated.

16 6. Section 3090 of the Code states:

17 "Except as otherwise provided by law, the board may take action against all persons guilty
18 of violating this chapter or any of the regulations adopted by the board. The board shall enforce
19 and administer this article as to licenseholders, and the board shall have all the powers granted in
20 this chapter for these purposes, including, but not limited to, investigating complaints from the
21 public, other licensees, health care facilities, other licensing agencies, or any other source
22 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
23 adopted by the board."

24 7. Section 3024 of the Code states:

25 "The Board may grant or refuse to grant certificates of registration as provided in this
26 chapter and may revoke or suspend the certificate of registration of any optometrist for any of the
27 causes specified in this chapter. It shall have the power to administer oaths and to take testimony
28 in the exercise of these functions. "

1 8. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
2 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued
4 or reinstated.

5 9. This Petition to Revoke Probation is brought pursuant to probation condition 14
6 which states:

7 "If Respondent violates any term of the probation in any respect, the Board, after giving
8 Respondent notice and the opportunity to be heard, may revoke probation and carry out the
9 disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent
10 during probation, the Board shall have continuing jurisdiction and the period of probation shall be
11 extended until the matter is final. No petition for modification of penalty shall be considered while
12 there is an accusation or petition to revoke probation or other penalty pending against Respondent.
13 "

14 10. Respondent's probation is subject to revocation because she failed to comply with
15 Probation Conditions, as set forth below:

16 **FIRST CAUSE TO REVOKE PROBATION**

17 **(Failure to Comply with Community Service Requirement)**

18 11. At all times after the effective date of Respondent's probation, Condition 10 stated:

19 "Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
20 Board, for its prior approval, a community service program in which Respondent provides free
21 professional services on a regular basis to a community of charitable facility or agency, amount to
22 a minimum of sixteen (16) hours per month of probation. Such services shall begin no later than
23 sixty (60) days after the effective date of this order. "

24 12. Respondent's probation is subject to revocation because she failed to comply with
25 Probation Condition 10, referenced above. The facts and circumstances regarding this violation
26 are as follows:

27 ///

28 ///

1 A. The Petition to Revoke Probation was effective May 18, 2011; therefore, Respondent
2 was required to commence providing community service no later than July 17, 2011. Respondent
3 was out of compliance for nineteen (19) of twenty-four (24) months as follows:

<u>DATE</u>	<u>HOURS COMPLETED</u>
July, 2011	3.46 Hours
October, 2011	7.92 Hours
November, 2011	7.5 Hours
December, 2011	8.33 Hours
January, 2012	4.25 Hours
February, 2012	4 Hours
March, 2012	10.75 Hours
April, 2012	10.5 Hours
June, 2012	9.7 Hours
July, 2012	6.8 Hours
August, 2012	3.1 Hours
October, 2012	7.3 Hours
November, 2012	6.7 Hours
December, 2012	15.7 Hours
January, 2013	14.1 Hours
February, 2013	10.1 Hours
March, 2013	10 Hours
April, 2013	4.7 Hours
May, 2013	1.7 Hours
June, 2013	9.3 Hours ¹

26
27 ¹ Although Respondent failed to meet her hours in June, 2013, she provided a medical
28 excuse so her hours in this month were forgiven.

1 On or about January 5, 2012, Respondent requested 30 days to provide a new plan to the
2 board for complying with the community service requirement. The Board granted Respondent's
3 request; however, no new plan has been received to date.

4 **SECOND CAUSE TO REVOKE PROBATION**

5 **(Failure to Comply with Billing System Audit)**

6 13. At all times after the effective date of Respondent's probation, Condition 16 stated:
7 "Within sixty (60) days of the effective date of this decision, Respondent shall provide to the
8 Board or its designee the names and qualifications of three auditors. The Board or its designee
9 shall select one of the three auditors to audit Respondent's billings for compliance with the Billing
10 System condition of probation. During said audit, randomly selected client billing records shall be
11 reviewed in accordance with accepted auditing/accounting standards and practices. If requested
12 by the Board, the Board shall be advised of the results of the audit, and may obtain any and all
13 copies of any documents audited or the results of the audit, upon request. The cost of the audits
14 shall be borne by Respondent. Failure to pay for the audits in a timely fashion or failure to provide
15 the Board with the audit results and/or copies of the audited records within ten (10) days from the
16 audit completion shall constitute a violation of probation. Respondent's practice is no longer
17 required to be monitored by a supervising optometrist (Dr. Hoverman), at this point in time. "

18 14. Respondent's probation is subject to revocation because she failed to comply with
19 Probation Condition 16, referenced above. The facts and circumstances regarding this violation
20 are as follows:

21 A. Respondent provided the names and qualifications of three auditors to the Board.
22 However, two declined to provide audit services and one failed to respond in a timely manner.
23 Respondent was requested to provide the names and qualification of two more auditors who she
24 had spoken to in regards to the audit services. On October 13, 2011, Respondent provided the
25 names of two more auditors who she stated were interested in performing the audit services. On
26 November 29, 2011, one of the auditors accepted the engagement.

27 ///

1 On May 12, 2012, Respondent was given thirty (30) days to complete the audit. On January
2 3, 2013, the Board requested an update on the audit requirement. On February 5, 2013,
3 ~~Respondent was given until February 28, 2013, to complete the audit. On March 5, 2013,~~
4 Respondent began the audit. On June 17, 2013, the audit was completed. To date, Respondent
5 has failed to provide the Board with the audit results.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the State Board of Optometry issue a decision:

9 1. Revoking the probation that was granted by the State Board of Optometry in Case No.
10 CC 2002-162 and imposing the disciplinary order that was stayed thereby revoking Optometry
11 License No. OPT 10148 issued to Huyen Mong Nguyen;

12 2. Revoking or suspending Optometry License No. OPT 10148, issued to Huyen Mong
13 Nguyen;

14 3. Taking such other and further action as deemed necessary and proper.
15

16
17 DATED: September 25, 2013

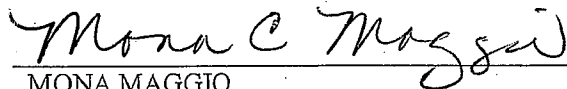

MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order on Accusation Against Huyen Mong Nguyen

State Board of Optometry Case No. D2-2002-162

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2002 162

HUYEN MONG NGUYEN
1010-B Florin Road
Sacramento, CA 95831

OAH No. 2002 162

Optometry No. 10148

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by
the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 10, 2006

It is so ORDERED June 8, 2006



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-6292
Facsimile: (916) 327-8643

6 Attorneys for Complainant

7
8 BEFORE THE
STATE BOARD OF OPTOMETRY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2002 162

11 HUYEN MONG NGUYEN
12 1010-B Florin Road
13 Sacramento, CA 95831

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 Optometry No. 10148

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Taryn Smith (Complainant) is the Executive Officer of the State Board of
21 Optometry. She brought this action solely in her official capacity and is represented in this
22 matter by Bill Lockyer, Attorney General of the State of California, by Jeffrey M. Phillips,
23 Deputy Attorney General.

24 2. Respondent Huyen Mong Nguyen (Respondent) is represented in this
25 proceeding by attorney J. Kevin Elimendorf, whose address is 2295 Gateway Oaks Drive, Suite
26 105, Sacramento, CA 95833-3225.

27 3. On or about September 10, 1993, the State Board of Optometry issued
28 Optometry License No. 10148 to Huyen Mong Nguyen (Respondent). The Optometry license

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 2002
2 162 and will expire on October 31, 2007, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2002 162 was filed before the State Board of Optometry
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 September 29, 2005. Respondent timely filed her Notice of Defense contesting the Accusation.
8 A copy of Accusation No. 2002 162 is attached as exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 2002 162. Respondent has also
13 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
14 Settlement and Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
18 the right to present evidence and to testify on her own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. 2002 162.

27 ///

28 ///

1 9. Respondent agrees that her Optometry license is subject to discipline and
2 she agrees to be bound by the State Board of Optometry (Board) 's imposition of discipline as set
3 forth in the Disciplinary Order below.

4 RESERVATION

5 10. The admissions made by Respondent herein are only for the purposes of
6 this proceeding, or any other proceedings in which the State Board of Optometry or other
7 professional licensing agency is involved, and shall not be admissible in any other criminal or
8 civil proceeding.

9 CONTINGENCY

10 11. This stipulation shall be subject to approval by the State Board of
11 Optometry. Respondent understands and agrees that counsel for Complainant and the staff of
12 the State Board of Optometry may communicate directly with the Board regarding this
13 stipulation and settlement, without notice to or participation by Respondent or her counsel. By
14 signing the stipulation, Respondent understands and agrees that she may not withdraw her
15 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
16 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
17 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
18 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
19 further action by having considered this matter.

20 12. The parties understand and agree that facsimile copies of this Stipulated
21 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
22 force and effect as the originals.

23 13. In consideration of the foregoing admissions and stipulations, the parties
24 agree that the Board may, without further notice or formal proceeding, issue and enter the
25 following Disciplinary Order:

26 //

27 //

28 //

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometry License No. 10148 issued to Respondent Huyen Mong Nguyen (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. ACTUAL SUSPENSION. Optometry License No. 10148 issued to Respondent Huyen Mong Nguyen is suspended for a period of fourteen (14) consecutive days, commencing 90 days from the effective date of this Disciplinary Order.

2. OBEY ALL LAWS. - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

3. COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Respondent shall comply with the Board's probation surveillance program, including but not limited to allowing access to the Respondent's optometric practice(s) and patient records upon request of the Board or its agent.

Upon successful completion of probation, Respondent's license shall be fully restored.

4. REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

5. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE -

Periods of residency or practice as an optometrist outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. The Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as an optometrist. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new optometry license during the term of probation.

6. SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all of the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the optometric regulatory agency in every state and territory in which she has an optometry license.

7. FUNCTION AS AN OPTOMETRIST - Respondent, during the period of probation, shall engage in the practice of optometry in California for a minimum of 24 hours per week for 6 consecutive months within each year of the probationary period, or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of optometry" may include, when approved by the Board, volunteer work as an optometrist, or work in any non-direct patient care position that requires licensure as an optometrist.

If Respondent has not complied with this condition during the probationary term, and the Respondent has presented sufficient documentation of her good faith efforts to comply

1 with this condition, and if no other conditions have been violated, the Board, in its discretion,
2 may grant an extension of the Respondent's probation period up to one year without further
3 hearing in order to comply with this condition. During the one year extension, all original
4 conditions of probation shall apply.

5 8. SUPERVISION - Respondent shall practice under the supervision of a
6 Board-approved optometrist to conduct on site review of billings, patient records, and
7 prescriptions. The cost of the on site review will be borne by Respondent.

8 9. EMPLOYMENT LIMITATIONS - Respondent shall not work in any
9 health care setting as a supervisor of optometrists. The Board may additionally restrict
10 Respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case
11 basis. Respondent shall not work as a faculty member in an approved school of optometry or as
12 an instructor in a Board approved continuing education program.

13 10. COMPLETE OPTOMETRY COURSE(S) - Respondent, at her own
14 expense, shall enroll and successfully complete continuing education courses in ethics relevant to
15 the practice of optometry no later than six months prior to the end of her probationary term. The
16 amount of courses will be determined by the Board.

17 Respondent shall obtain prior approval from the Board before enrolling in the
18 course(s). Respondent shall submit to the Board the original transcripts or certificates of
19 completion for the above required course(s). The Board shall return the original documents to
20 Respondent after photocopying them for its records.

21 11. COST RECOVERY - Respondent shall pay to the Board costs associated
22 with its investigation and enforcement pursuant to Business and Professions Code Section 125.3
23 in the amount of \$21,126.25. Respondent shall be permitted to pay these costs in a payment plan
24 approved by the Board, with payments to be completed no later than the end of the probationary
25 period. A discount of 20% will be given if Respondent makes full payment within 60 days of the
26 effective date of this order.

27 If Respondent has not complied with this condition during the time indicated, and
28 has presented sufficient documentation of her good faith efforts to comply, and if no other.

1 conditions have been violated, the Board, in its discretion, may grant an extension of the
2 Respondent's probation period up to one year without further hearing in order to comply with
3 this condition. During the one year extension, all original conditions of probation will apply.

4 12. VIOLATION OF PROBATION - If Respondent violates the conditions of

5 her probation, the Board, after giving the Respondent notice and an opportunity to be heard, may
6 set aside the stay order and impose the stayed discipline (revocation/suspension) of the
7 Respondent's license.

8 If, during the period of probation, an accusation or petition to revoke probation
9 has been filed against Respondent's license or the Attorney General's Office has been requested
10 to prepare an accusation or petition to revoke probation against Respondent's license, the
11 probationary period shall automatically be extended and shall not expire until the accusation or
12 petition has been acted upon by the Board.

13 13. LICENSE SURRENDER - During Respondent's term of probation, if she
14 ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the
15 conditions of probation, Respondent may surrender her license to the Board. The Board reserves
16 the right to evaluate Respondent's request and to exercise its discretion whether to grant the
17 request, or to take any other action deemed appropriate and reasonable under the circumstances,
18 without further hearing. Upon formal acceptance of the tendered license and wall certificate,
19 Respondent will no longer be subject to the conditions of probation.

20 Surrender of Respondent's license shall be considered a disciplinary action and
21 shall become a part of Respondent's license history with the Board. An optometrist whose
22 license has been surrendered may petition the Board for reinstatement no sooner than one year
23 from the effective date of the disciplinary decision.

24 ACCEPTANCE

25 I have carefully read the above Stipulated Settlement and Disciplinary Order and
26 have fully discussed it with my attorney, J. Kevin Elmendorf. I understand the stipulation and
27 the effect it will have on my Optometry License. I enter into this Stipulated Settlement and

28 ///

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the State Board of Optometry.

3 DATED: 05/11/06

4 
HUYEN MONG NGUYEN (Respondent)
5 Respondent

6 I have read and fully discussed with Respondent Huyen Mong Nguyen the terms
7 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
8 Order. I approve its form and content.

9 DATED: 5/12/06

10 
11 J. KEVIN ELMENDORF
12 Attorney for Respondent

13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the State Board of Optometry of the Department of Consumer
16 Affairs.

17 DATED: 5/15/06

18 BILL LOCKYER, Attorney General
19 of the State of California

20 
21 JEFFREY M. PHILLIPS
22 Deputy Attorney General

23 Attorneys for Complainant

24 DOI Matter ID: SA2005100123
10239878.wpd

1 BILL LOCKYER, Attorney General
of the State of California
2 JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-6292
Facsimile: (916) 322-8288

6 Attorneys for Complainant
7
8

9 BEFORE THE
10 STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2002 162

13 HUYEN MONG NGUYEN
1010-B Florin Road
14 Sacramento, California 95831

ACCUSATION

15 Certificate of Registration to Practice Optometry No. 10148
16 Fictitious Name Permit Number 2202

Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Taryn Smith ("Complainant") brings this Accusation solely in her official
21 capacity as the Executive Officer of the State Board of Optometry ("Board"), Department of
22 Consumer Affairs.

23 2. On or about September 10, 1993, the Board issued Certificate of
24 Registration to Practice Optometry Number 10148 to Huyen Mong Nguyen ("Respondent").
25 Respondent's certificate of registration was in full force and effect at all times relevant to the
26 charges brought herein and will expire on October 31, 2005, unless renewed.

27 3. On or about November 9, 1995, the Board issued Fictitious Name Permit
28 Number 2202 to Respondent, authorizing the use of the fictitious name, "In Focus Optometry", in

1 conjunction with Respondent's optometric practice located at 1010-B Florin Road, Sacramento,
2 California. Respondent's fictitious name permit was in full force and effect at all times relevant
3 to the charges brought herein and will expire on January 31, 2006, unless renewed.

4 STATUTORY PROVISIONS

5 4. Business and Professions Code ("Code") section 3090 states, in pertinent
6 part:

7 The certificate of registration of any person registered under this chapter,
8 or any former act relating to the practice of optometry, may be revoked or
9 suspended for a fixed period by the board for any of the following:

10 (b) Unprofessional conduct...

11 5. Code section 118, subdivision (b), provides, in pertinent part, that the
12 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
13 action during the period within which the license may be renewed, restored, reissued or
14 reinstated.

15 6. Code section 3125 states, in pertinent part:

16 It is unlawful to practice optometry under a false or assumed name, or to
17 use a false or assumed name in connection with the practice of optometry, or to
18 make use of any false or assumed name in connection with the name of a person
19 licensed pursuant to this chapter. However, the board may issue written permits
20 authorizing an individual optometrist or an optometric group or optometric
21 corporation to use a name specified in the permit in connection with its practice if,
22 and only if, the board finds to its satisfaction that:

23 (d) No charges which could result in revocation or suspension of an
24 optometrist's certificate to practice optometry are pending against any optometrist
25 practicing at the location.

26 Permits issued under this section by the board shall expire and become
27 invalid unless renewed at the times and in the manner provided in Article 7
28 (commencing with Section 3145) for the renewal of certificates issued under this
chapter. The board may charge an annual fee, not to exceed ten dollars (\$ 10) for
the issuance or renewal of each such permit.

Any permit issued under this section may be revoked or suspended
at any time that the board finds that any one of the requirements for original
issuance of a permit, other than under subdivision (d), is no longer being

///

fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

In the event the board revokes or suspends the certificate to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

7. Code section 810 states, in pertinent part:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance . . .

8. Code section 3101 states that the obtaining of any fee by fraud or misrepresentation constitutes unprofessional conduct.

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

10. On or about February 13, 2003, Joy Cornelison ("Cornelison"), Appeal and Hearing Coordinator for Vision Service Plan ("VSP"), notified the Board that an Adverse Action Report had been filed with the National Practitioner Data Bank ("NPDB"), indicating that VSP permanently revoked Respondent's clinical privileges effective January 23, 2003, for submitting false information on claim forms. On or about February 25, 2003, the Board requested an investigation by the Division of Investigation ("DOI") of the Department of Consumer Affairs concerning the information reported to NPDB.

11. DOI investigator Nickie Bach ("Bach") obtained copies of certain documents and patient records from VSP and Respondent and conducted interviews with various

///

///

1 witnesses, including Respondent. During her interview with Bach on September 13, 2004,
2 Respondent admitted, in substance, the following:

3 12. Respondent became a VSP provider in 1999. In 2002, at the time of
4 VSP's audit of Respondent's claim records, Respondent's optometry practice, In Focus
5 Optometry, was staffed by two salespersons (including the receptionist who sold glasses), a full
6 time optician, and Respondent. Respondent stated that when she sees a new patient, it is her
7 practice to have the patient fill out a history form. A pretest is conducted, and the patient's visual
8 field is checked. Respondent then performs a comprehensive exam, and if necessary, fills out a
9 prescription. If the patient is interested in buying glasses, the receptionist/salesperson helps the
10 patient choose glasses. Respondent's patient records typically contain information showing what
11 the patient purchased, insurance billing information, the patient history sheet, and exam findings.

12 13. Respondent admitted that some of the billings submitted to VSP were not
13 accurate and that she submitted eClaims to VSP with prescriptions different from those noted in
14 the patients' files. Respondent admitted further that she "wanted to make her customers happy"
15 by helping them buy products that were not covered by insurance. For example, if a client
16 wanted sunglasses that were not covered by his or her policy, Respondent offered to bill VSP for
17 glasses and frames. Respondent would obtain fees from VSP that would, "be put towards the
18 purchase of sunglasses." If a family wanted designer plano sunglasses^{1/} costing \$330.00,
19 Respondent would bill VSP using the maximum plan allowance and would place a multiple
20 order for lenses and frames. Respondent stated that bargaining and looking for ways to offset
21 costs are common cultural practices in the Asian, Black, and Latino communities and that she
22 generally did not offer bargains to her Caucasian clientele because, typically, "white people
23 follow the rules." Respondent admitted that she stopped her former billing practices because she
24 "got caught."

25 ///

26 ///

27

28 1. "Plano" sunglasses are fashion sunglasses with simple sunlenses (meaning without prescription) in them.

FIRST CAUSE FOR DISCIPLINE

(Knowingly Presenting False or Fraudulent Claims
for Payment Under a Contract of Insurance)

14. Respondent's certificate of registration to practice optometry is subject to disciplinary action pursuant to Code section 810, subdivision (a)(1) and (2), in that in and between May 2000 and July 2002, she knowingly presented or caused to be presented false or fraudulent claims for the payment of losses under contracts of insurance and/or knowingly prepared, made or subscribed a writing and allowed it to be presented or used in support of a false or fraudulent claim, as follows:

Patient H. C.

a. On or about April 23, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometry services and products allegedly provided to patient H.C. on April 23, 2002, including an eye examination, frames and single vision clear lenses. This claim was billed under patient H.C.'s VSP coverage. On or about April 24, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometry services and products allegedly provided to patient H.C. on April 22, 2002, including an eye examination, frames, and single vision clear lenses. This second claim was billed under the VSP plan for A.C. In fact, Respondent did not provide any service or products to the patient on April 22, 2002, and double billed VSP for the comprehensive optometry services and products. On May 15, 2002, VSP issued Check Number 824852 in the amount of \$181.64 to Respondent in payment of said claim.

Patient R. D.

b. On or about May 2, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometry services and products allegedly provided to patient R. D. on March 1, 2002, including an eye examination, elective contact lenses, and single vision disposable lenses (7 day supply). In fact, Respondent did not provide that service or those products to the patient on that date. On May 15, 2002, VSP issued Check Number 824852 in the amount of \$490.00 to Respondent in payment of said claim.

1 Patient L. G.

2 c. On or about December 27, 2001, Respondent submitted or caused to be
3 submitted to VSP a claim for payment of optometry services and products allegedly provided

4 to patient L. G. on December 27, 2001, including an eye examination and contacts. In fact,
5 Respondent did not provide that service or product to the patient on that date. The prescription
6 for contact lenses on this date did not match the patient's prescription written by Respondent on
7 January 25, 2002.

8 d. On or about January 2, 2002, Respondent submitted or caused to be
9 submitted to VSP an eClaim for payment of optometry services and products allegedly provided
10 to patient L. G. on January 2, 2002, including an eye examination, frame, and single vision
11 lenses. In fact, Respondent did not provide that service or those products to the patient on that
12 date.

13 Patient N. H.

14 e. On January 3, 2002, Respondent submitted or caused to be submitted to
15 VSP an eClaim for payment of comprehensive optometric services and products (contact lenses)
16 allegedly provided to patient N. H. on January 3, 2002. On January 4, 2002, Respondent
17 prescribed contact lenses for the patient. On or about January 9, 2002, Respondent submitted or
18 caused to be submitted to VSP an eClaim for payment of optometry products allegedly provided
19 to patient N. H. on January 3, 2002, including a frame and Varilux Comfort Progressive
20 Polycarbonate lenses. On January 31, 2002, VSP issued Check Number 725045 in the amount
21 of \$200.49 to Respondent in payment of said claim.

22 Patient A. H.

23 f. On or about May 13, 2000, Respondent submitted or caused to be
24 submitted to VSP an eClaim for payment of comprehensive optometry services and products
25 allegedly provided to patient A.H. on May 13, 2000, including an eye examination, lenses, and a
26 frame. On May 13, 2000, Respondent documented in the patient's examination record: "02/99
27 No Rx needed," circled and crossed-out the recommendation "No Rx needed" and circled
28 "optional" under the recommendation "Rx change optional." The patient's written prescription

1 for "+0.25 DS O.U." dated May 11, 2000, is an inconsequential and non-therapeutic prescription.
2 Respondent documented in the December 26, 2001 patient record: "5/31/00 No Rx needed -
3 optional."

4 g. On or about February 14, 2002, Respondent submitted or caused to be
5 submitted to VSP an eClaim for payment of optometry products allegedly provided to patient
6 A. H. on December 31, 2001, including a frame and Panamic Progressive (multifocal) plastic
7 lenses ("2nd pair"). On February 26, 2002, Respondent submitted, or caused to be submitted, to
8 VSP another eClaim for payment of a comprehensive eye examination, frame, and AO Compact
9 Progressive (multifocal) plastic lenses allegedly provided to the patient on December 31, 2001.
10 In fact, on December 26, 2001, the patient's medical records note that Respondent prescribed
11 *single vision - near* prescription lenses for the patient (as opposed to multifocal lenses). On
12 March 15, 2002, VSP issued two checks to Respondent in payment of said claims: a check in the
13 sum of \$215.38 and a check in the sum of \$275.53.

14 Patient L.L.

15 h. On or about May 18, 2002, Respondent submitted or caused to be
16 submitted to VSP an eClaim for payment of comprehensive optometry services and products
17 allegedly provided to patient L.L. on May 18, 2002, including an eye examination and elective
18 contact lenses/single vision colored soft contacts. The patient's prescription of -0.25 DS O.U.
19 dated May 18, 2002, is inconsequential and non-therapeutic. Respondent also documented in the
20 patient's medical records "Rx change optional". On June 30, 2002, VSP issued Check Number
21 867569 in the amount of \$350.00 to Respondent in payment of the claim.

22 i. On June 19, 2002, Respondent submitted, or caused to be submitted, to
23 VSP an eClaim for payment of a frame and Varilux *Progressive* (multifocal) lenses (identified as
24 "2nd pair") allegedly provided to the patient on May 18, 2002, although there is no examination
25 record to support a prescription for multifocal lenses. On July 15, 2002, VSP issued Check
26 Number 881708 in the amount of \$215.49 to Respondent in payment of the latter claim.

27 Patient M. L.

28 j. On or about *July 31, 2001*, Respondent submitted or caused to be

1 submitted to VSP an eClaim for payment of comprehensive optometry services and products
2 allegedly provided to patient M.L. on *August 4, 2001*, including an eye examination and elective
3 contact lenses/single vision colored soft lenses. The patient's prescription of -0.25 DS O.U.

4 dated August 4, 2001, is inconsequential and non-therapeutic. Respondent also documented in
5 the patients medical records "Rx change optional". On August 31, 2001, VSP issued Check
6 Number 5839897 in the amount of \$350.00 to Respondent in payment of the claim.

7 **Patient S.L.**

8 k. On or about *July 31, 2001*, Respondent submitted or caused to be
9 submitted to VSP an eClaim for payment of comprehensive optometry services and products
10 allegedly provided to patient S.L. on *August 4, 2001*, including an eye examination and elective
11 contact lenses/single vision colored soft lenses. In fact, Respondent documented in the patient's
12 examination record dated August 4, 2001, that the patient's distance and near vision were "O.K."
13 and noted "No Rx needed" and "Rx change optional." On or about August 16, 2001, Respondent
14 submitted or caused to be submitted to VSP an eClaim for payment of optometry services and
15 products allegedly provided to patient S.L. on August 4, 2001, including single vision lenses and
16 frames. On August 31, 2001, VSP issued Check Number 5839 in the amount of \$350.00 to
17 Respondent in payment of the claim.

18 l. On or about May 18, 2002, Respondent submitted or caused to be
19 submitted to VSP an eClaim for payment of comprehensive optometry services and products
20 allegedly provided to patient S.L. on *June 15, 2002*, including an eye examination and elective
21 contact lenses/single vision colored soft contacts. In fact, Respondent documented in the
22 patient's examination record dated June 15, 2002, "dist. O.K. Near O.K." and "No Rx needed."
23 On June 30, 2002, VSP issued Check Number 867569 in the amount of \$350.00 to Respondent
24 in payment of the claim.

25 **Patient L.M.**

26 m. On or about June 5, 2002, Respondent submitted or caused to be submitted
27 to VSP an eClaim for payment of comprehensive optometry services and products allegedly
28 provided to patient L.M. on April 30, 2002, including an eye examination and spectacle frames.

1 On or about June 20, 2002, Respondent submitted or caused to be submitted to VSP two separate
2 eClaims. The first claim for payment for comprehensive optometry services and products was
3 allegedly provided on April 30, 2002, including an eye exam and frames. The second eClaim
4 was for payment of a pair of identical frames also allegedly provided to patient L.M. on April 30,
5 2002 (identified as "2nd pair.") In fact, Respondent documented in the patient's examination
6 record dated April 30, 2002, "No Rx needed." On June 30, 2002, VSP issued two checks to
7 Respondent in payment of the claims: a check in the amount of \$150.08 and a check in the
8 amount of \$89.93.

9 Patient L. R.

10 n. On or about September 5, 2002, Respondent submitted or caused to be
11 submitted to VSP an eClaim for payment of optometry services allegedly provided to patient
12 L.R. on September 4, 2002, including a comprehensive eye examination. On or about January 4,
13 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of
14 comprehensive optometry services and products allegedly provided to patient L. R. on September
15 27, 2001, including an eye examination, bifocal lenses, and a frame. In fact, the patient's
16 prescription dated September 27, 2001, written by Respondent, was for *single vision* lenses. On
17 or about January 15, 2002, VSP issued Check Number 710877 to Respondent in the amount of
18 \$191.38 in payment of the claim.

19 SECOND CAUSE FOR DISCIPLINE

20 (Obtaining Fees by Fraud or Misrepresentation)

21 15. Respondent's certificate of registration to practice optometry is subject to
22 disciplinary action pursuant to Code section 3090, subdivision (b), for unprofessional conduct, as
23 defined in Code section 3101. In and between May 2000 and July 2002, Respondent
24 obtained fees from VSP by fraud or misrepresentation, as set forth in paragraph 14 above.

25 OTHER MATTERS

26 16. Pursuant to Code section 3125, if Certificate of Registration to Practice
27 Optometry Number 10148, issued to Respondent Huyen Mong Nguyen, is revoked or suspended,
28 the Board may revoke or suspend Fictitious Name Permit Number 2202 issued to Respondent.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the State Board of Optometry issue a decision:


4 1. Revoking or suspending Certificate of Registration to Practice Optometry
5 Number 10148, issued to Huyen Mong Nguyen;

6 2. Revoking or suspending Fictitious Name Permit Number 2202, issued to
7 Huyen Mong Nguyen;

8 3. Ordering Huyen Mong Nguyen to pay the State Board of Optometry the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: 9/26/05


13
14 
15 TARYN SMITH
16 Executive Officer
17 State Board of Optometry
18 Department of Consumer Affairs
19 State of California
20 Complainant
21
22
23

24 03581-110-SA2005100123
25 phd; 07/13/2005
26
27
28

Exhibit B

Decision and Order on Petition to Revoke Probation Against Huyen Mong Nguyen

State Board of Optometry Case No. D2-2002-162



LEE A. GOLDSTEIN, O.D. MPA
PRESIDENT
BOARD OF OPTOMETRY

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General

3 State Bar No. 083047
4 1300 I Street, Suite 125
P.O. Box 944255

5 Sacramento, CA 94244-2550

6 Telephone: (916) 324-5339

Facsimile: (916) 327-8643

Attorneys for Complainant

7
8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke
13 Probation Against:

Case No. CC 2002-162

14 **HUYEN MONG NGUYEN**
15 **1010-B Florin Road**
16 **Sacramento, CA 95831**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 **Certificate of Registration to Practice**
18 **Optometry No. 10148,**

19 **Respondent.**

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
24 Optometry. She brought this action solely in her official capacity and is represented in this matter
25 by Edmund G. Brown Jr., Attorney General of the State of California, by Arthur D. Taggart,
26 Supervising Deputy Attorney General.

27 2. Respondent Huyen Mong Nguyen (Respondent) is representing herself in this
28 proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about September 10, 1993, the State Board of Optometry issued Certificate of
Registration to Practice Optometry No. 10148 to Huyen Mong Nguyen (Respondent). The

1 ~~Certificate of Registration to Practice Optometry was in full force and effect at all times relevant~~
2 to the charges brought in Petition to Revoke Probation No. CC 2002-162 and will expire on
3 October 31, 2011, unless renewed.

4 JURISDICTION

5 4. ~~Petition to Revoke Probation No. CC 2002-162~~ was filed before the State Board of
6 Optometry (Board), Department of Consumer Affairs, and is currently pending against
7 Respondent. The Petition to Revoke Probation and all other statutorily required documents were
8 properly served on Respondent on May 24, 2010. Respondent timely filed her Notice of Defense
9 contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. CC
10 2002-162 is attached as exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands the charges and allegations in Petition
13 to Revoke Probation No. CC 2002-162. Respondent has also carefully read and understands the
14 effects of this Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Petition to Revoke Probation; the right to be
17 represented by counsel at her own expense; the right to confront and cross-examine the witnesses
18 against her; the right to present evidence and to testify on her own behalf; the right to the issuance
19 of subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Petition to
26 Revoke Probation No. CC 2002-162.

27 ///

28 ///

1 9. Respondent agrees that her Certificate of Registration to Practice Optometry is
2 subject to discipline, and she agrees to be bound by the State Board of Optometry's (Board)
3 probationary terms as set forth in the Disciplinary Order below.

4 CONTINGENCY

5 10. This stipulation shall be subject to approval by the State Board of Optometry.

6 Respondent understands and agrees that counsel for Complainant and the staff of the State Board
7 of Optometry may communicate directly with the Board regarding this stipulation and settlement,
8 without notice to or participation by Respondent. By signing the stipulation, Respondent
9 understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation
10 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
11 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
12 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
13 and the Board shall not be disqualified from further action by having considered this matter.

14 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
15 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
16 effect as the originals.

17 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
18 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
19 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
20 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
21 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
22 writing executed by an authorized representative of each of the parties.

23 13. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Board may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:

26 ///

27 ///

1
2 **DISCIPLINARY ORDER**

3 IT IS HEREBY ORDERED that Certificate of Registration to Practice Optometry No.
4 10148 issued to Respondent Huyen Mong Nguyen (Respondent) is revoked. However, the
5 ~~revocation is stayed, and Respondent is placed on probation for five (5) years on the following~~
6 terms and conditions:

7 **Extension of Probation.** Respondent is currently subject to terms and conditions of a five-
8 year probationary period pursuant to a Decision and Order of the State Board of Optometry
9 effective July 10, 2006 in a disciplinary action entitled "*In the Matter of the Accusation Against*
10 *Huyen Mong Nguyen.*" Respondent's current probation and all of its terms and conditions shall
11 remain in effect until and unless this Stipulated Settlement is adopted by the Board. Once this
12 Stipulated Settlement is adopted by the Board, Respondent will then be placed on probation for
13 an additional five (5) year period of time from the effective date of the adoption of this Stipulated
14 Settlement and Disciplinary Order by the Board.

15 **SEVERABILITY CLAUSE:** Each condition of probation contained herein is a separate
16 and distinct condition. If any condition of this Order, or any application thereof, is declared
17 unenforceable in whole, in part, or to any extent, the remainder of this Order and all other
18 applicants thereof, shall not be affected. Each condition of this Order shall separately be valid
19 and enforceable to the fullest extent permitted by law.

20 1. **OBEY ALL LAWS.** Respondent shall obey all laws, whether federal, state, or local.
21 The Respondent shall also obey all regulations governing the practice of optometry in California.

22 2. **QUARTERLY REPORTS.** Respondent shall file quarterly reports of compliance
23 under penalty of perjury, on forms to be provided, to the probation monitor assigned by the
24 Board. Omission or falsification in any manner of any information on these reports shall
25 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
26 to revoke probation against Respondent's optometrist license. Quarterly report forms will be
27 provided by the Board. Respondent is responsible for contacting the Board to obtain additional
28

1 forms if needed. Quarterly reports are due for each year of probation and the entire length of
2 probation as follows:

- 3 • For the period covering January 1st through March 31st, reports are to be
4 completed and submitted between April 1st and April 7th.
- 5 • For the period covering April 1st through June 30th, reports are to be completed
6 and submitted between July 1st and July 7th.
- 7 • For the period covering July 1st through September 30th, reports are to be
8 completed and submitted between October 1st and October 7th.
- 9 • For the period covering October 1st through December 31st, reports are to be
10 completed and submitted between January 1st and January 7th.

11 Failure to submit complete and timely reports shall constitute a violation of probation.

12 3. **PROBATION MONITORING PROGRAM.** Respondent shall comply with
13 requirements of the Board-appointed probation monitoring program, and shall, upon reasonable
14 request, report to or appear to a venue as directed.

15 Respondent shall claim all certified mail issued by the Board, respond to all notices of
16 reasonable requests timely, and submit Reports, Identification Update reports or other reports
17 similar in nature, as requested and directed by the Board or its representative.

18 Respondent shall provide to the Board the names, physical addresses, mailing addresses,
19 telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors
20 and shall give specific, written consent that the Respondent authorizes the Board and its
21 representatives and the employers, supervisors, managers, and contractors to communicate
22 regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but
23 is not limited to, any violation of any probationary term and condition.

24 Respondent is encouraged to contact the Board's Probation Program at any time she has a
25 question or concern regarding her terms and conditions of probation.

26 Failure to appear for any scheduled meeting or examination, or cooperate with the
27 requirements of the program, including timely submission of requested information, shall
28

1 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
2 revoke probation against Respondent's Optometrist license.

3 4. **PROBATION MONITORING COSTS.** All costs incurred for probation
4 monitoring during the entire probation shall be paid by the Respondent. The monthly cost for
5 probation monitoring is \$100.00 and shall be paid to the Board each month for the entire term of
6 probation. Respondent's failure to comply with all terms and conditions may also cause this
7 amount to be increased.

8 All payments for costs are to be sent directly to the Board of Optometry and must be
9 received by the first day of each month. Periods of tolling will not toll the probation monitoring
10 costs incurred.

11 If Respondent is unable to submit costs for any month, she shall be required, instead, to
12 submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to
13 submit the costs, including payment amount(s). Supporting documentation and evidence of why
14 the Respondent is unable to make such payment(s) must accompany this submission.

15 Respondent understands that failure to submit costs timely is a violation of probation and
16 submission of evidence demonstrating financial hardship does not preclude the Board from
17 pursuing further disciplinary action. However, Respondent understands that by providing
18 evidence and supporting documentation of financial hardship, it may delay further disciplinary
19 action.

20 In addition to any other disciplinary action taken by the Board, an unrestricted license will
21 not be issued at the end of the probationary period and the optometrist license will not be
22 renewed, until such time as all probation monitoring costs have been paid. The filing of
23 bankruptcy by the Respondent shall not relieve the Respondent of her responsibility to reimburse
24 the Board for costs incurred.

25 5. **FUNCTION AS AN OPTOMETRIST.** Respondent shall function as an
26 optometrist for a minimum of 24 hours per week for the entire term of her probation period.

27 6. **NOTICE TO EMPLOYER.** Respondent shall provide to the Board the names,
28 physical addresses, mailing addresses, and telephone number of all employers and supervisors

1 and shall give specific, written consent that the licensee authorizes the Board and the employers
2 and supervisors to communicate regarding the licensee's work status, performance, and
3 monitoring.

4 Respondent shall be required to inform her employer, and each subsequent employer during
5 the probation period, of the discipline imposed by this decision by providing her supervisor and
6 director and all subsequent supervisors and directors with a copy of the decision and order, and
7 the Accusation in this matter prior to the beginning of or returning to employment or within 14
8 days from each change in a supervisor or director.

9 The employer will then inform the Board, in writing, that they are aware of the discipline,
10 on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to
11 obtain additional forms if needed. All reports completed by the employer must be submitted from
12 the employer directly to the Board.

13 7. **CHANGES OF EMPLOYMENT OR RESIDENCE.** Respondent shall notify the
14 Board, and appointed probation monitor, in writing, of any and all changes of employment,
15 location, and address within 14 days of such change. This includes but is not limited to, applying
16 for employment, termination or resignation from employment, change in employment status, and
17 change in supervisors, administrators, or directors.

18 Respondent shall also notify her probation monitor AND the Board, IN WRITING, of any
19 changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing
20 purposes; however, the Respondent must also provide her physical residence address as well.

21 8. **COST RECOVERY.** Respondent shall pay to the Board a sum not to exceed the
22 costs of the investigation and prosecution of this case pursuant to Business and Professions Code
23 section 125.3 That sum shall be the balance owing on the sum previously ordered in the total
24 amount of \$21,126.25 and shall be paid in full directly to the Board, in a Board-approved
25 payment plan, within six (6) months prior to the end of the probationary term. Cost recovery will
26 not be tolled.

27 If Respondent is unable to submit costs timely, she shall be required instead to submit an
28 explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she

1 will be able to submit the costs, including payment amount(s). Supporting documentation and
2 evidence of why the Respondent is unable to make such payment(s) must accompany this
3 submission.

4 Respondent understands that failure to submit costs timely is a violation of probation and
5 ~~submission of evidence demonstrating financial hardship does not preclude the Board from~~
6 pursuing further disciplinary action. However, Respondent understands that by providing
7 evidence and supporting documentation of financial hardship may delay further disciplinary
8 action.

9 Consideration to financial hardship will not be given should Respondent violate this term
10 and condition, unless an unexpected AND unavoidable hardship is established from the date of
11 this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not
12 relieve the Respondent of her responsibility to reimburse the Board for these costs.

13 9. **TAKE AND PASS LICENSURE EXAMINATION.** Respondent shall take and
14 pass the California Laws and Regulations Examination (CLRE). Respondent shall pay the
15 established examination fees. If Respondent has not taken and passed the examination within
16 twelve (12) months from the effective date of this decision, Respondent shall be considered to be
17 in violation of probation.

18 10. **COMMUNITY SERVICE.** Within thirty (30) days of the effective date of this
19 decision, Respondent shall submit to the Board, for its prior approval, a community service
20 program in which Respondent provides free professional services on a regular basis to a
21 community of charitable facility or agency, amount to a minimum of sixteen (16) hours per
22 month of probation. Such services shall begin no later than sixty (60) days after the effective date
23 of this order.

24 11. **VALID LICENSE STATUS.** Respondent shall maintain a current, active, and valid
25 license for the length of the probation period. Failure to pay all fees and meet CE requirements
26 prior to her license expiration date shall constitute a violation of probation.

27 12. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE.** Periods of
28 residency or practice outside California, whether the periods of residency or practice are

1 temporary or permanent, will toll the probation period but neither toll the cost recovery
2 requirement nor the probation monitoring costs incurred. Travel out of California for more than
3 thirty (30) days must be reported to the Board, in writing, prior to departure. Respondent may
4 notify the Board, in writing, within 14 days, upon her return to California and prior to the
5 commencement of any employment where representation as an optometrist was provided.

6 Respondent's license shall be automatically cancelled if Respondent's periods of temporary
7 or permanent residence or practice outside California total two (2) years. However, Respondent's
8 license shall not be cancelled as long as Respondent is residing and practicing in another state of
9 the United States and is on active probation with the licensing authority of that state, in which
10 case, the two-year period shall begin on the date probation is completed or terminated in that
11 state.

12 13. **LICENSE SURRENDER.** During Respondent's term of probation, if she ceases
13 practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of
14 probation, Respondent may surrender her license to the Board. The Board reserves the right to
15 evaluate Respondent's request and exercise its discretion whether to grant the request, or to take
16 any other action deemed appropriate and reasonable under the circumstances, without further
17 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
18 longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and
19 Probation Monitoring) are due upon reinstatement.

20 Surrender of Respondent's license shall be considered a disciplinary action and shall
21 become a part of Respondent's license history with the Board.

22 14. **VIOLATION OF PROBATION.** If Respondent violates any term of the probation
23 in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may
24 revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke
25 probation is filed against Respondent during probation, the Board shall have continuing
26 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
27 modification of penalty shall be considered while there is an accusation or petition to revoke
28 probation or other penalty pending against Respondent.

1 15. **COMPLETION OF PROBATION.** Upon successful completion of probation,

2 Respondent's license shall be fully restored.

3 16. **MONITOR BILLING SYSTEM AUDIT.** Within sixty (60) days of the effective
4 date of this decision, Respondent shall provide to the Board or its designee the names and
5 qualifications of three auditors. The Board or its designee shall select one of the three auditors to

6 audit Respondent's billings for compliance with the Billing System condition of probation:

7 During said audit, randomly selected client billing records shall be reviewed in accordance with
8 accepted auditing/accounting standards and practices. If requested by the Board, the Board shall
9 be advised of the results of the audit, and may obtain any and all copies of any documents audited
10 or the results of the audit, upon request. The cost of the audits shall be borne by Respondent.
11 Failure to pay for the audits in a timely fashion or failure to provide the Board with the audit
12 results and/or copies of the audited records within ten (10) days from audit completion shall
13 constitute a violation of probation. Respondent's practice is no longer required to be monitored
14 by a supervising optometrist (Dr. Hoverman), at this point in time.

15 17. **EMPLOYMENT LIMITATIONS.** Respondent shall not work in any health care
16 setting as a supervisor of optometrists. The Board may additionally restrict Respondent from
17 supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

18 Respondent shall not work as a faculty member in an approved school of optometry or as an
19 instructor in a Board-approved continuing education program.

20 Respondent shall work only on a regularly assigned, identified and predetermined
21 worksite(s) and shall not work in a float capacity.

22 If Respondent is working or intends to work in excess of forty (40) hours per week, the
23 Board may request documentation to determine whether there should be restrictions on the hours
24 of work.

25 18. **CONTINUING EDUCATION COURSE IN ETHICS.** Within ninety (90) days of
26 the effective date of the Board's Decision and Order, Respondent shall submit the name of a
27 continuing education course in ethics for prior Board approval. Said course must be taken and
28 completed within one (1) year from the effective date of the Board's Decision and Order.

The costs associated with the ethics course shall be paid by Respondent. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. Respondent shall submit to the Board the original transcripts or certificates of completion for the ethics course. The Board shall return the original documents to Respondent after photocopying them for its records.

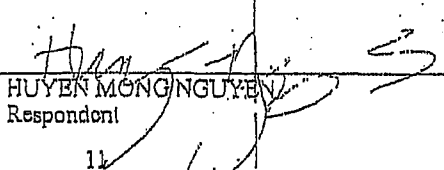
19. MENTAL HEALTH EVALUATION. Respondent shall, within 30 days of the effective date of this Decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of an optometrist. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board.

If Respondent fails to have the above assessment submitted to the Board within the 30-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

ACCEPTANCE

I understand that I have the right to retain private counsel at my own expense. I have chosen to represent myself in this proceeding. I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certificate of Registration to Practice Optometry. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 1/14/11


HUYEN MONG NGUYEN
Respondent

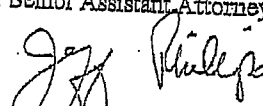
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
submitted for consideration by the State Board of Optometry of the Department of Consumer
Affairs.

Dated: 1/19/11

EDMUND G. BROWN JR.
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General


JEFFREY M. PHILLIPS
Deputy Attorney General
Attorneys for Complainant

SA2009310030
10621073.doc

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125

5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643

7 *Attorneys for Complainant*

8
9 BEFORE THE
10 STATE BOARD OF OPTOMETRY
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Petition to Revoke
14 Probation Against:

Case No. 2002 162

PETITION TO REVOKE PROBATION

15 HUYEN MONG NGUYEN
16 1010-B Florin Road
Sacramento, California 95831

17 Certificate of Registration to Practice
18 Optometry No. 10148

19 Fictitious Name Permit Number 2202

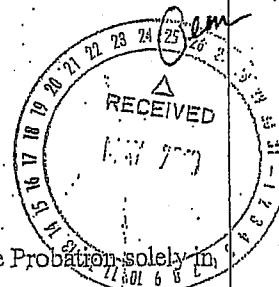
20 Respondent.

21 Complainant alleges:

22 1. Mona Maggio, ("Complainant") brings this Petition to Revoke Probation solely in
23 her official capacity as the Executive Officer of the Board of Optometry ("Board"), Department
24 of Consumer Affairs.

25 License History

26 2. On or about September 10, 1993, the Board issued Certificate of Registration to
27 Practice Optometry Number 10148 (also known as "Optometry License") to Huyen Mong
28



PETITION TO REVOKE PROBATION

1 Nguyen ("Respondent"). Respondent's certificate of registration was in full force and effect at all
2 times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

3 Prior Discipline

4 3. In a disciplinary action entitled "*In the Matter of Accusation Against Huyen Mong*
5 *Nguyen*," Case No. 2002 162, the Board of Optometry issued a decision, effective July 10, 2006,
6 in which Respondent's Certificate of Registration to Practice Optometry No. 10148 was revoked.
7 However, the revocation was stayed, and Respondent was placed on probation for a period of five
8 (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and
9 is incorporated by reference.

10 JURISDICTION

11 4. This Petition to Revoke Probation is brought before the Board of Optometry,
12 Department of Consumer Affairs, under the authority of the following laws. All section
13 references are to the Business and Professions Code ("Code"), unless otherwise indicated.

14 5. Code sections 3024 and 3090 provide that the Board may take disciplinary action
15 against any optometry license issued by the Board, including, but not limited to, revocation or
16 suspension of the license, in addition to placing terms and conditions on the license.

17 PETITION TO REVOKE PROBATION

18 6. Grounds exist for revoking the probation and reimposing the order of revocation of
19 Respondent's Certificate of Registration to Practice Optometry No. 10148. Condition No. 13 of
20 the Decision and Order states:

21 VIOLATION OF PROBATION - If Respondent violates the conditions
22 of her probation, the Board, after giving the Respondent notice and an opportunity to
23 be heard, may set aside the stay order and impose the stayed discipline
(revocation/suspension) of the Respondent's license.

24 If, during the period of probation, an accusation or petition to revoke
25 probation has been filed against Respondent's license or the Attorney General's
26 Office has been requested to prepare an accusation or petition to revoke probation
against Respondent's license, the probationary period shall automatically be extended
and shall not expire until the accusation or petition has been acted upon by the Board.

27 7. Respondent's probation is subject to revocation because she failed to comply with
28 Probation Condition 13, referenced above, as set forth below:

FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Probation)

8. At all times after the effective date of Respondent's probation, Condition 3 states, in pertinent part:

COMPLY WITH THE BOARD'S PROBATION PROGRAM -

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Respondent shall comply with the Board's probation surveillance program, including but not limited to allowing access to the Respondent's optometric practice(s) and patient records upon request of the Board or its agent.

9. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 3, referenced above. The facts and circumstances regarding this violation are that Respondent has failed to obey all laws, submit timely quarterly reports, failed to obtain a probation monitor in a timely fashion, and failed to comply with cost recovery payments, as alleged below.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

10. At all times after the effective date of Respondent's probation, Condition 2 states, in pertinent part:

OBEY ALL LAWS. -

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

1 11. Respondent's probation is subject to revocation because she failed to comply with
2 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
3 are that on or about September 7, 2006, Respondent drove to her probation interview with the
4 Board on an expired California drivers license.

5 THIRD CAUSE TO REVOKE PROBATION

6 (Failure to Submit Timely Written Reports)

7 12. At all times after the effective date of Respondent's probation, Condition 6 states, in
8 pertinent part:

9 SUBMIT WRITTEN REPORTS -

10 Respondent, during the period of probation, shall submit or cause to be
11 submitted such written reports/declarations and verification of actions under penalty
12 of perjury, as required by the Board. These reports/declarations shall contain
13 statements relative to Respondent's compliance with all of the conditions of the
14 Board's Probation Program. Respondent shall immediately execute all release of
15 information forms as may be required by the Board or its representatives.

16 Respondent shall provide a copy of this decision to the optometric regulatory
17 agency in every state and territory in which she has an optometry license.

18 13. Respondent's probation is subject to revocation because she failed to comply with
19 Probation Condition 6, referenced above. The facts and circumstances regarding this violation
20 are that Respondent has failed to submit timely quarterly reports, as follows: Respondent's first
21 quarterly report was due on or before October 30, 2006, with reports submitted to the board every
22 three months thereafter. Respondent submitted her first quarterly report to the Board on or about
23 November 12, 2006, which was two weeks late. Respondent then failed to submit a quarterly
24 reports for the following periods: Fourth Quarter 2006, First Quarter 2007, Second Quarter 2007,
25 Third Quarter 2007, Fourth Quarter 2007. On or about May 6, 2008 the Board received a
26 quarterly report signed by respondent on April 30, 2008 that seems to cover the First Quarter
27 2008, but was submitted five weeks late. Respondent failed to submit quarterly reports for:
28 Second Quarter 2008, Third Quarter 2008, Fourth Quarter 2008, and First Quarter 2009. On or
about July 15, 2009, the Board received an unsigned and undated quarterly report that seems to
cover the Second Quarter 2009, but was submitted two weeks late. Respondent failed to submit
quarterly reports for: Third Quarter 2009, Fourth Quarter 2009, First Quarter 2010.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Comply with Supervision Requirements)

14. At all times after the effective date of Respondent's probation, Condition 9 states, in pertinent part:

SUPERVISION - Respondent shall practice under the supervision of a Board-approved optometrist to conduct on site review of billings, patient records, and prescriptions. The cost of the on site review will be borne by Respondent.

15. Respondent and the Board agreed that Respondent would have at least 40 hours of supervised practice within the first six months of probation, beginning on July 10, 2006, with quarterly reports issued by this Board monitor. Respondent's probation is subject to revocation because she failed to substantially comply with Probation Condition 12, referenced above. The facts and circumstances regarding this violation are that Respondent failed to obtain a supervising optometrist until December 16, 2009 and failed to issue her first supervision report to the Board until February 22, 2010.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Comply with Cost Recovery Payments)

16. At all times after the effective date of Respondent's probation, Condition 12 states, in pertinent part:

COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$21,126.25. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than the end of the probationary period.

If Respondent has not complied with this condition during the time indicated, and has presented sufficient documentation of her good faith efforts to comply, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

17. Respondent had agreed to make monthly payments in the amount of \$200.00 per month for the first 40 months of probation, beginning on September 30, 2006, with an additional 12 payments of \$1,093.85 thereafter, with the payments to be received by the Board by the 30th

day of each month. Respondent's probation is subject to revocation because she failed to substantially comply with Probation Condition 12, referenced above, as follows:

Pymt #	Pymt Mo	Amt due	Amt Pd	Date Rec'd	Balance
					\$21,126.25
1	Sept 2006	\$200.00	\$200.00	9/19/06	\$20,926.25
2	Oct 2006	\$200.00	\$200.00	11/1/06	\$20,726.25
3	Nov 2006	\$200.00	\$200.00	11/30/06	\$20,526.25
4	Dec 2006	\$200.00	\$200.00	12/29/06	\$20,326.25
5	Jan 2007	\$200.00	\$200.00	1/31/07	\$20,126.25
6	Feb 2007	\$200.00	\$200.00	2/28/07	\$19,926.25
7	Mar 2007	\$200.00			\$19,926.25
8	Apr 2007	\$200.00	\$400.00	4/30/07	\$19,526.25
9	May 2007	\$200.00	\$200.00	5/31/07	\$19,326.25
10	June 2007	\$200.00	\$200.00	6/29/07	\$19,126.25
11	July 2007	\$200.00	\$200.00	7/31/07	\$18,926.25
12	Aug 2007	\$200.00	\$200.00	8/31/07	\$18,726.25
13	Sept 2007	\$200.00			\$18,726.25
14	Oct 2007	\$200.00	\$400.00	11/1/07	\$18,326.25
15	Nov 2007	\$200.00	\$200.00	11/30/07	\$18,126.25
16	Dec 2007	\$200.00	\$200.00	12/31/07	\$17,926.25
17	Jan 2008	\$200.00			\$17,926.25
18	Feb 2008	\$200.00	\$200.00	2/8/08	\$17,726.25
19	Mar 2008	\$200.00	\$400.00	3/3/08	\$17,326.25
20	Apr 2008	\$200.00			\$17,326.25
21	May 2008	\$200.00	\$400.00	5/6/08	\$16,926.25
22	June 2008	\$200.00			\$16,926.25
23	July 2008	\$200.00	\$400.00	7/1/08	\$16,526.25
24	Aug 2008	\$200.00			\$16,526.25

1	25	Sept 2008	\$200.00			\$15,526.25
2	26	Oct 2008	\$200.00	\$600.00	10/2/08	\$15,926.25
3	27	Nov 2008	\$200.00			\$15,926.25
4	28	Dec 2008	\$200.00			\$15,926.25
5	29	Jan 2009	\$200.00			\$15,926.25
6	30	Feb 2009	\$200.00			\$15,926.25
7	31	Mar 2009	\$200.00			\$15,926.25
8	32	Apr 2009	\$200.00			\$15,926.25
9	33	May 2009	\$200.00			\$15,926.25
10	34	June 2009	\$200.00			\$15,926.25
11	35	July 2009	\$200.00	\$1,400.00	7/13/09	\$14,526.25
12	36	Aug 2009	\$200.00	\$400.00	8/25/09	\$14,126.25
13	37	Sept 2009	\$200.00			\$14,126.25
14	38	Oct 2009	\$200.00	\$900.00	10/14/09 ¹	\$13,226.25
15	39	Nov 2009	\$200.00			\$13,226.25
16	40	Dec 2009	\$200.00			\$13,226.25
17	41	Jan 2010	\$1,093.85	\$1,000.00	1/29/10	\$12,226.25
18	42	Feb 2010	\$1,093.85			\$12,226.25
19	43	Mar 2010	\$1,093.85	\$1,000.00	3/2/10	\$11,226.25
20	44	Apr 2010	\$1,093.85	\$1,000.00	4/1/10	\$10,226.25
21	45	May 2010	\$1,093.85			

//

//

//

¹ Made two payments equaling \$900: \$800 rec'd on 10/14 & \$100 rec'd on 10/29

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Optometry issue a decision:

1. Revoking the probation that was granted by the Board of Optometry in Case No. 2002 162 and imposing the disciplinary order that was stayed, thereby revoking Certificate of Registration to Practice Optometry No. 10148 issued to Huyen Mong Nguyen;
2. Revoking or suspending Certificate of Registration to Practice Optometry No. 10148 issued to Huyen Mong Nguyen; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/13/10

Mona Maggio
Mona Maggio
Executive Officer
Board of Optometry
Department of Consumer Affairs
State of California
Complainant

SA2010100557
pet revoke prob.rtf